

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Promotion of Competitive Networks )  
in Local Telecommunications Markets )  
)  
Wireless Communications Association )  
International, Inc. Petition for Rulemaking )  
to Amend Section 1.40000 of the )  
Commission's Rules to Preempt Restrictions )  
on Subscriber Premises Reception or )  
Transmission Antennas Designed to )  
Provide Fixed Wireless Services )  
)  
Cellular Telecommunications Industry )  
Association Petition for Rule Making and )  
Amendment of the Commission's Rules )  
to Preempt State and Local Imposition of )  
Discriminatory And/Or Excessive Taxes )  
and Assessments )  
)  
Implementation of the Local Competition )  
Provisions in the Telecommunications Act )  
of 1996 )

WT Docket No. 99-217

CC Docket No. 96-98

**REPLY COMMENTS OF BELL ATLANTIC<sup>1</sup>**

AT&T's comments demonstrate precisely why the Commission should not attempt to apply section 224 of the Act to in-building wiring. AT&T is soon to be the largest cable

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<sup>1</sup> The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

television company and is currently the largest long distance carrier. It wants the Commission to require "public utilities" to provide nondiscriminatory access to in-building wiring under section 224, while asking it to confirm that this section does not apply to either cable television or long distance companies, i.e., to AT&T's primary businesses. *See* AT&T at 15-16. In other words, AT&T, which makes completely unsubstantiated allegations that incumbent local exchange carriers are preventing competitors from accessing multi-tenant buildings,<sup>2</sup> wants Commission endorsement of its own desire to discriminate and exclude others when it provides either cable television or long distance service within a building.

The Commission should not condone AT&T's anticompetitive aims by attempting to stretch the pole attachment provisions of section 224 to include in-building conduit and wiring. Instead, it should require *all* entities that it regulates – telecommunications carriers (local as well as long distance), cable systems, and other video service providers alike – to provide nondiscriminatory access to in-building wiring that they own or control. It should also adopt a presumption that exclusive arrangements entered into by any of those entities to serve all tenants of a multi-tenant building are anticompetitive and unreasonable. This would mean that AT&T, just like its competitors, would not be able to exclude other service providers from access to in-building wiring. Such a federal policy will accomplish the Commission's goal of promoting competition. The Commission should see through AT&T's proposal and reject it as inconsistent with that procompetitive goal.

The Commission should also reject the proposals of other commenters to allow building owners to charge local exchange carriers for access to tenants in their buildings. First, this is a

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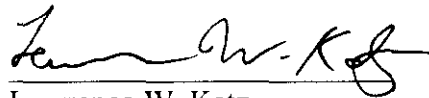
<sup>2</sup> Bell Atlantic's corporate policy is to give all competitors access to in-building wiring that it owns or controls. *See* Bell Atlantic at 3.

matter that should be dealt with at the state level, because the obligation of a customer to provide space to allow local exchange carriers to deliver their services is embodied in state tariffs and relates to provision of local telecommunications services. *See Texas Off. Pub. Util. Counsel v. FCC*, 183 F.3d 393 (5<sup>th</sup> Cir., 1999) (Commission exceeded its authority by prohibiting disconnection of local service for nonpayment of toll charges). Second, if the Commission does address the issue, it should deny the building owners the right both to charge local exchange carriers for space for their terminating equipment and to reserve space in their buildings for the exclusive use of specific exchange carriers. Common carriers have an obligation to provide telecommunications service upon reasonable request. Carriers should not be forced to pay private landlords a fee for access to a building to enable them to meet that legal obligation. Imposition of such fees could also limit, rather than increase, competition by providing a barrier to entry for carriers that are unwilling or unable to pay the building owner for access. This would *reduce* the choices of carriers and services available to tenants, which is the contrary to the goals of this proceeding. It would also increase carriers' costs and raise rates for all ratepayers – or at least those within the building (if the carrier could impose a surcharge). The Commission should not adopt a policy that raises local rates to pay private building owners for the “privilege” of having telephone service in their buildings. In addition, allowing building owners to reserve the available space for the use of certain carriers and not others is inconsistent with giving tenants their choice of providers.

Finally, RCN Corporation makes the erroneous claim that Bell Atlantic is unable to provision house and riser cable adequately and provide RCN with cross-connections to that cable in Massachusetts and New York. RCN at 7-8. RCN is wrong. In Massachusetts, RCN has not given Bell Atlantic even one request to connect to house and riser cable. And in New York, the

overwhelming majority of orders that RCN has sent to Bell Atlantic for house and riser cable connections have been completed on time, and those that were not were largely attributed to the failure of RCN to submit accurate or complete orders, as shown in the attached affidavits submitted in response to similar unsubstantiated claims before the New York Public Service Commission.<sup>3</sup> In any event, the issue of Bell Atlantic's provisioning of house and riser cable for RCN is pending before the New York Commission and there is no need to deal with it here.

Respectfully Submitted,



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Attorney for the Bell Atlantic  
Telephone Companies

September 27, 1999

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<sup>3</sup> One of the attached documents includes the relevant portion of a much longer affidavit dealing primarily with unrelated issues. The affidavits have been redacted to exclude customer and carrier proprietary information.

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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Petition of New York Telephone Company for Approval :  
of its Statement of Generally Available Terms and :  
Conditions Pursuant to Section 252 of the : Case 97-C-0271  
Telecommunications Act of 1996; and Draft Filing of :  
Petition for InterLATA Entry Pursuant to Section 271 of :  
the Telecommunications Act of 1996 to Provide In- :  
Region, InterLATA Services in the State of New York :  
-----X

JOINT SUPPLEMENTAL REPLY AFFIDAVIT OF DONALD E. ALBERT, JULIE A.  
CANNY, GEORGE S. DOWELL, KAREN MAGUIRE AND PATRICK J. STEVENS  
ON BEHALF OF BELL ATLANTIC - NEW YORK

Randal S. Milch  
Donald C. Rowe

New York Telephone Company  
d/b/a BELL ATLANTIC - NEW YORK  
1095 Avenue of Americas  
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(212) 395-6405

Dated: New York, New York  
May 5, 1999

Intermedia ¶¶ 72-73) should be rejected. This proceeding is not the appropriate case to reconsider these matters.

59. The FCC is considering what network elements must be offered on an unbundled basis in its UNE remand proceeding. (*In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 95-185, 96-98, *In the Matter of Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Second Further Notice of Proposed Rulemaking (rel. April 16, 1999).) The eventual UNE requirements that will follow from the FCC remand proceeding cannot and should not be guessed at in this proceeding. Rather, the Commission can best address this important matter as part of a review of BA-NY's UNE combination offerings and NY PSC No. 916 Tariff after the FCC completes the remand proceeding.

60. Similarly, a number of parties attempt to revisit the Company's offerings to combine UNEs and the Commission's prior rulings pertaining to combinations. This matter is properly being considered in Case 98-C-0690 and should not be allowed to derail the timely review of BA-NY's compliance with the competitive checklist. Finally, any claim that prices for UNEs and UNE combinations need to be addressed in connection with this Section 271 review is groundless. The Commission has adequately covered costing and pricing issues in the proceedings before Judge Linsider (Cases 95-C-0657, *et al.*) and in its review of the Company's tariff filings.

### **House and Riser Update**

61. RCN asserts (¶ 6) that the practices implemented by BA-NY for provisioning house and riser facilities on an unbundled basis are ineffective and that BA-NY has only recently instituted mechanized procedures to support the ordering and provisioning of this offering.

RCN's assertions are disingenuous. BA-NY has collaborated closely with RCN to implement practices for provisioning house and riser. BA-NY has only recently developed a mechanized ordering interface because there has been no commercial demand for it prior to RCN's recent activity in this area.

62. RCN asserts that the BA-NY Web GUI is not available to support ordering. This claim is meritless. Not only has RCN used the Web GUI to place orders, but BA-NY employees have spent many hours assisting RCN employees to help them create their initial Web GUI orders for house and riser facilities. To date, BA-NY, working cooperatively with RCN, has successfully cutover to RCN service in excess of \*\* \*\*\* customers in \*\* \*\*\* buildings to unbundled house and riser for RCN. Since many of these cutover orders were handled on a project basis as mutually agreed to by BA-NY and RCN, the orders were not submitted through the Web GUI. Nonetheless, BA-NY has also processed approximately \*\* \*\*\* additional orders sent by RCN via the Web GUI.

63. Similarly, RCN's suggestion that there should be a mechanized provisioning process for house and riser is plainly wrong. There is no way to mechanize the cross-connection of the house and riser facilities at the customer premises location. This work effort must be performed manually. RCN objects to the fact that BA-NY field technicians, rather than RCN employees, perform cross-connection work. Despite RCN's allegations that the BA-NY technicians present a bottleneck, there is no evidence to support this claim. For example, on one day alone \*\* \*\*\* conversions were completed. BA-NY's efficiency has been hampered by RCN's failure to adhere to the agreed-to processes, which calls for RCN to have its dial tone at the cross connect panel by 3:00 PM the day prior to the scheduled conversion. In approximately

30% of the orders, RCN failed to complete this work on time. Clearly, use of BA-NY's technicians is not a bottleneck.

64. RCN acknowledges that BA-NY has allocated adequate labor resources to handle house and riser orders. (RCN ¶ 8.) There is, however, no basis for RCN's suggestion that BA-NY will reduce this labor force once its Section 271 application is approved. BA-NY has put in place the resources needed to support an open competitive telecommunications market in New York and is committed to maintaining adequate service levels and the appropriate level of resources needed to handle the requirements of wholesale customers. RCN's suggestion that BA-NY has negotiated "sweetheart deals" with the unions representing our employees in an effort to stifle competition is beneath extended reply. (RCN ¶ 9.) While RCN claims that its (non-union) technicians already work in the same areas as BA-NY's union technicians, RCN cannot point to any instance in which its non-union employees work on BA-NY's equipment. If it were to do so, there would undoubtedly be contentious labor issues which can be avoided by having BA-NY technicians do the work. This, however, does not stifle competition or impede RCN's ability to enter the local market using BA-NY's house and riser facilities in conjunction with RCN's switch and loop plant.

**NON-DISCRIMINATORY ACCESS TO POLES,  
DUCTS, CONDUITS AND RIGHTS-OF-WAY**

65. In the Joint Supplemental Affidavit, BA-NY demonstrated that it is providing non-discriminatory access to its poles, ducts, conduits and rights-of-way. BA-NY provides access to the poles, ducts, conduits and rights-of-way it owns and controls pursuant to standard licensing agreements. All carriers therefore obtain access under the same terms and conditions. BA-NY also has detailed procedures that apply generally to requests for access to poles, ducts,

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Region, InterLATA Services in the State of New York :  
-----X

AUGUST REPLY AFFIDAVIT OF KAREN MAGUIRE AND  
PATRICK J. STEVENS ON BEHALF OF BELL ATLANTIC - NEW YORK

STATE OF NEW YORK     )  
                                  ) ss.:  
COUNTY OF NEW YORK    )

Karen Maguire and Patrick J. Stevens separately being duly sworn upon oath, depose and state as follows:

1. My name is Karen Maguire. My business address is 140 West Street, 6<sup>th</sup> Floor, New York, New York 10038. I have filed affidavits previously in this proceeding, most recently on July 1, 1999. My responsibilities and background are set forth in the Joint Affidavit, filed September 11, 1998.

2. My name is Patrick J. Stevens. My business address is 1095 Avenue of the Americas, 14<sup>th</sup> Floor, New York, New York 10036. I filed affidavits previously in this proceeding, most recently on July 22, 1999. My responsibilities and background are set forth in the Joint Affidavit filed September 11, 1998.

3. The purpose of this Reply Affidavit is to respond to the claims made by Mr. Kuczma in his affidavit filed July 26, 1999 on behalf of RCN ("RCN Aff."). We do so by

reporting the facts known to us and provided by others at our request. Our reply has awaited RCN's response to BA-NY data requests designed to provide some support to RCN's cursory affidavit. RCN partially answered that request on August 3<sup>rd</sup> and 12<sup>th</sup>, and has yet to complete the provision of the requested data, as discussed below. Even with that incomplete response in hand, it is clear that the RCN affidavit makes numerous claims that are not supported by the facts. BA-NY has supported and continues to support RCN's use of BA-NY's house and riser facilities.

#### **BA-NY's On-Time Performance**

4. RCN claims that BA-NY is not completing orders on time (RCN Aff. ¶ 4). These claims are vastly exaggerated. RCN's own affidavit and data provided in response to BA-NY's July 26th follow-up interrogatory do not support its claims. In the affidavit, RCN points to 250 orders as the basis for its assertion that 60% of its orders are provisioned late (RCN Aff. ¶ 4, n.1). However, in response to BA-NY's request that it supply supporting data, RCN could only point to 49 instances which it alleges are orders that were missed due to BA-NY actions – less than 20% of the number it claimed that BA-NY “missed.” Thus, even if it were true that the 49 orders were missed *and* that those misses were attributable to BA-NY, which is not the case, RCN's response now reveals that BA-NY provisioned 80% of even this limited universe on time. Of course, the on-time performance number is far higher when the 40% of the orders RCN does not contest were provisioned on-time are included as well.

5. In fact, BA-NY has not been the sole cause of misses on the 49 orders supplied in the interrogatory response. For instance, many of these orders had multiple due date changes, or had to be reappointed on the due date, or both. The cause of these activities cannot be readily assigned to either BA-NY or RCN. For example, reappointments occurring on the due date frequently result where BA-NY encounters no access or no dial-tone conditions when seeking to

physically provision the order on site. RCN has provided no basis to assume that the provisioning delays in even its new, more limited set of 49 jobs can be attributed fairly to BA-NY.

**RCN's Internal Service And Systems Have Caused Many Of The Problems RCN Raises**

6. BA-NY has worked diligently with RCN on all aspects of provisioning house and riser, and *both* BA-NY and RCN have experienced some start-up problems in this new service area. However, it is particularly striking that the Affidavit fails to even acknowledge that a significant portion of the alleged service difficulties RCN has experienced is caused by RCN's own performance. For example, BA-NY has encountered a high percentage of instances where, upon dispatch to the customer location, it encounters a no RCN dial-tone condition. In BA-NY's experience, RCN has failed to have dial tone pre-positioned at the terminal at the customer location for an average of 10% of all lines to be converted on project orders. This is entirely inconsistent with the parties' agreement that RCN would verify the presence of its dial tone at the appropriate terminal location by 3 P.M. on the day prior to the scheduled work and would notify BA-NY of any problems it encountered -- thereby eliminating unnecessary dispatches of BA-NY installation technicians. RCN's repeated failure to adhere to this agreed-upon procedure results in unnecessary dispatches and contributes to overdue orders.

7. In addition, RCN orders are frequently incomplete or inaccurate, requiring BA-NY to query the orders back for clarification. The high percentage of queries is directly attributed to RCN's failure to use the requisite pre-order functionality provided by BA-NY to validate existing customer information. The time involved in resolving the query affects BA-NY's ability to schedule the jobs, to issue all requisite provisioning orders and to meet the

negotiated due date. In fact of the \*\* \*\*\* agreed upon for scheduled due dates in August, 30% of the orders were incomplete and/or inaccurate when delivered to BA-NY.

8. Recently, RCN has also been sending double orders. That is, it will send one order through the project process and a duplicate order through the Web GUI interface. RCN appears to be relying on BA-NY to “scrub” its service orders due to internal RCN inventory and tracking systems inadequacies. The result is that BA-NY employees hired to support all CLECs are required to spend a disproportionate amount of time investigating and clearing the service order queries that are the result of RCN’s duplicate service requests. This contributes to delays in processing other valid requests received in the same time frames. As a result, BA-NY’s ability to generate the necessary internal provisioning orders is delayed, jeopardizing both parties’ ability to meet the due dates for valid orders. One recent example concerns the project agreed to for conversion of \*\* \*\*\* customer lines at \*\* \*\*\*. Although BA-NY and RCN had negotiated an agreed upon project date due for these orders of August 5<sup>th</sup>, 45% of the orders received for this location were cancelled by RCN on the evening of August 3<sup>rd</sup>, largely because they were duplicative of other RCN orders. This case is indicative of a systemic problem in RCN ordering procedures.

9. In addition, RCN does not properly use the escalation process to resolve problems. BA-NY has established an escalation process for quickly resolving problems through the management chain of command, in the unfortunate event there is a problem. RCN seldom, if ever, uses the correct escalation lists at the correct time. In fact at the July 23rd meeting, RCN advised that it was unaware of the availability of the escalation lists in the CLEC Handbook available on the Web. This information was specifically provided to RCN on July 27th. Similarly, RCN often does not return phone calls to BA-NY regarding possible service-affecting

problems on a timely basis. In just one recent example, the BA-NY project manager left an urgent message with \*\* on July 27th, regarding the erroneous orders for \*\* and other pending locations, and did not receive a call back despite repetitive efforts. Indeed, it was not until BA-NY's project manager placed a call to Mr. Kuczma on August 2<sup>nd</sup>, when Mr. Kuczma returned from vacation, that these errors began to be addressed by RCN.

**BA-NY Has The Ability To Handle Large Volumes Of Orders**

10. RCN's assertions that BA-NY is not capable of handling the demand of requests for house and riser orders are unfounded (RCN Aff. ¶ 4). It is BA-NY's experience that just the opposite is the case. RCN does not appear able to generate the orders it originally forecasted to BA-NY. In March 1999, RCN advised BA-NY that it was ready to begin generating orders to convert its embedded base of resale accounts, as well as committed orders for new customers to RCN facilities. RCN stated that this expected customer interest totaled \*\*

\*\*\*. BA-NY agreed to work with RCN to schedule work associated with these lines and put in place the work force to handle this expressed demand. It was mutually agreed that, because of the logistics involved with processing large volumes of orders in specific locations, that projects would be scheduled on a building-by-building basis. To date, RCN has sent BA-NY \*\* orders (including those with August due dates). Further, for 12 weeks, between April 21, 1999 and July 14, 1999, RCN sent \*\* orders despite requests from BA-NY to do so. This three-month gap in providing the committed orders is not even mentioned in the RCN Affidavit.<sup>1</sup>

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<sup>1</sup> Importantly, RCN has acknowledged that, where it did submit the promised "project orders", these were handled well by BA-NY at on-time levels at or above 90%.

11. Further, RCN claimed in the Affidavit that it had lost “40 customers in the last 45 days” due to BA-NY delay (RCN Aff. ¶ 5). However, when asked for detail, it did not provide even a single claim for this period. Neither did RCN provide any detail in support for the claims of earlier injury it made in the response it did provide – despite repeated BA-NY requests.

12. RCN also claims incorrectly that BA-NY personnel have not been trained on house and riser procedures (RCN Aff. ¶ 4). RCN again has not provided BA-NY with sufficient details to allow BA-NY to correct RCN’s misstatement specifically. As a factual matter, however, BA-NY has formal Methods and Procedures for house and riser conversions. A dedicated field force has been trained to handle house and riser project installation and repair as part of their required training.

13. This fact was communicated to RCN in a meeting between RCN and BA-NY on July 23rd. Mr. Kuczma, the RCN operations representative, was not able to provide specific details about any instances in which BA-NY personnel have failed to adhere to established methods. He did, however, commit to provide those details. BA-NY advised that it would identify appropriate individuals involved and would reinforce the processes to be followed. The necessary PON specific information was not made available to BA-NY until nearly three weeks later, when a meeting was held with Commission Staff on August 12, 1999. BA-NY has begun to investigate these PONs as it earlier committed.

**BA-NY Stands Willing To Continue Working With RCN Towards Resolving Service Delivery “Problems”**

14. BA-NY has always been ready to work cooperatively with RCN to resolve all problems encountered and to explore different methods that will allow for more efficient installation practices. To carry through on this commitment, BA-NY has met with RCN both with and without the Commission Staff’s participation. Specifically, BA-NY has held frequent

meetings with RCN (e.g., June 3rd, June 28th and July 23rd) which have contributed to many joint process improvements. In addition, the BA-NY project manager is in near-daily contact with Mr. Kuczma and his staff. However, BA-NY opportunities to assist RCN in its delivery of service to its customers are severely restrained by the lack of specific information furnished by RCN.

15. BA-NY is willing to continue to work closely with RCN towards resolving any open issues. This effort is again underway with the assistance of Commission. However, RCN has here chosen a litigation effort in lieu of a cooperative effort. Therefore, BA-NY is regrettably obliged here to correct the misstatements of facts and mischaracterizations of the joint working circumstances set forth in the affidavit. In short, the necessary BA-NY processes and personnel are ready and able to serve RCN when it is ready to use them.

16. This concludes the Reply Affidavit.

I hereby swear, under penalty of perjury, that the foregoing is true and correct, to the best of my knowledge and belief.

Karen Maguire  
Karen Maguire

\_\_\_\_\_  
Patrick J. Stevens

Sworn to before me this 16<sup>th</sup> day of August, 1999.

Sworn to before me this \_\_\_\_ day of August, 1999.

Miguel A. Rosa  
Notary Public

\_\_\_\_\_  
Notary Public

MIGUEL A. ROSA  
Notary Public, State of New York  
No. 43-4771951, Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires Nov. 30, 2002

I hereby swear, under penalty of perjury, that the foregoing is true and correct, to the best of my knowledge and belief.

\_\_\_\_\_  
Karen Maguire

Sworn to before me this \_\_\_\_ day of August, 1999.

\_\_\_\_\_  
Notary Public

*Patrick J. Stevens*  
\_\_\_\_\_  
Patrick J. Stevens


Sworn to before me this 16 day of August, 1999.

*Miguel A. Rosa*  
\_\_\_\_\_  
Notary Public

MIGUEL A. ROSA  
Notary Public, State of New York  
No. 43-4771951, Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires Nov. 30, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 1999, copies of the forgoing "Reply Comments" were served, by hand, on the Secretary of the Federal Communications Commission and the FCC's copy contractor, ITS.

  
\_\_\_\_\_  
Jennifer L. Hoh

\* Via hand delivery.